

RULE 17. PARTIES PLAINTIFF AND DEFENDANT: CAPACITY

(a) Real Party in Interest. Except for any action brought under General Laws, chapter 152, section 15 every action shall be prosecuted in the name of the real party in interest. A personal representative, guardian, conservator, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the Commonwealth. An insurer who has paid all or part of a loss may sue in the name of the assured to whose rights it is subrogated. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

b) Infants or Incompetent Persons of Incapacitated Persons. Whenever an infant or incompetent person, or an incapacitated person as defined in G.L.c. 190B has a representative, such as a guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person, or incapacitated person as defined in G.L.c. 190B. If an infant or incompetent person, or an incapacitated person as defined in G.L.c. 190B does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person, or an incapacitated person as defined in G.L.c. 190B not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, or an incapacitated person as defined in G.L.c. 190B.

Amended June 24, 2009, effective July 1, 2009; amended _____, effective _____.

Reporters' Notes - 1973

Rule 17 is a modified version of Federal Rule 17; the requirement that actions be prosecuted in the name of the real party in interest is new to Massachusetts law. At common law in Massachusetts, the subrogee had no right to sue the tortfeasor in his own name. His rights were considered equitable in nature, entitling him to bring the action only in the insured's name. See *Gray v. United States*, 77 F.Supp. 869 (D.Mass.1948), reversed on other grounds, 172 F.2d 737 (1st Cir.1949). By statute (G.L. c. 231 s. 5), the assignee of a non-negotiable legal chose in action which has been assigned in writing may maintain an action thereon in his own name. With several exceptions, Rule 17(a) makes compulsory a suit in the name of the real party in interest. One of the exceptions is not contained in Federal Rule 17: "An insurer who has paid all or part of a loss may sue in the name of the assured to whose right it is subrogated."

The second sentence in Rule 17(a) does not really qualify the first sentence. Individuals such as executors, bailees, trustees, etc. have a "real interest" in the litigation.

The last sentence of Rule 17(a) permits a reasonable time for ratification by, or joinder or substitution of, the real party in interest. It tracks a 1966 amendment to Federal Rule 17(a). This provision is consistent with Massachusetts practice, which allows amendments as to parties (G.L. c. 231 s. 51).

Rule 17(b), which copies Federal Rule 17(c) without change, accords with prior Massachusetts law. See G.L. c. 201. Federal Rule 17(b) is omitted from Rule 17 as inapplicable to state practice.

Reporter's Notes - 2009

The 2009 amendments reflect changes resulting from the adoption of the Massachusetts Uniform Probate Code.

Reporter's Notes –

The rule is updated to reflect terminology changes introduced by the Massachusetts Uniform Probate Code, G.L. c. 190B.